

# INDIANA CODE SECTIONS RELATED TO CONFIDENTIALITY

- A. Health Records (IC 16-39-1-9)
- B. Duty to Warn (IC 34-30-16)
- C. HIV/AIDS (IC 16-41-7-1)
- D. Juveniles (IC 12-23-12-1)
- E. Child Abuse Reporting (IC 31-33-5)

NOTE: These statutes are current as of 7/7/2006.  
To determine if there have been subsequent  
changes to the statute you may check the code  
on-line at: <http://www.in.gov/legislative/ic/code/>  
or contact the Indiana Judicial Center.

## A. Health Records

### IC 16-39-1-9

Alcohol and drug abuse records described in 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 may not be disclosed unless authorized in accordance with 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3.

*As added by P.L.4-1997, SEC.3.*

## B. Duty to Warn

### IC 34-30-16-1

A mental health service provider is immune from civil liability to persons other than the patient for failing to:

- (1) predict; or
- (2) warn or take precautions to protect from;

a patient's violent behavior unless the patient has communicated to the provider of mental health services an actual threat of physical violence or other means of harm against a reasonably identifiable victim or victims, or evidences conduct or makes statements indicating an imminent danger that the patient will use physical violence or use other means to cause serious personal injury or death to others.

*As added by P.L.1-1998, SEC.26.*

### IC 34-30-16-2

The duty to warn of or to take reasonable precautions to provide protection from violent behavior or other serious harm arises only under the limited circumstances specified in section 1 of this chapter. The duty is discharged by a mental health service provider who takes one (1) or more of the following actions:

- (1) Makes reasonable attempts to communicate the threat to the victim or victims.
- (2) Makes reasonable efforts to notify a police department or other law enforcement agency having jurisdiction in the patient's or victim's place of residence.
- (3) Seeks civil commitment of the patient under IC 12-26.
- (4) Takes steps reasonably available to the provider to prevent the patient from using physical violence or other means of harm to others until the appropriate law enforcement agency can be summoned and takes custody of the patient.
- (5) Reports the threat of physical violence or other means of harm, within a reasonable period of time after receiving knowledge of the threat, to a physician or psychologist who is designated by the employer of a mental health service provider as an individual who has the responsibility to warn under this chapter.

*As added by P.L.1-1998, SEC.26.*

**IC 34-30-16-3**

A mental health service provider who discloses information that must be disclosed to comply with sections 1 through 2 of this chapter is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

*As added by P.L.1-1998, SEC.26.*

**IC 34-6-2-80**

"Mental health service provider", for purposes of IC 34-30-16, means any of the following:

- (1) A physician licensed under IC 25-22.5.
- (2) A hospital licensed under IC 16-21.
- (3) A private institution licensed under IC 12-25.
- (4) A psychologist licensed under IC 25-33.
- (5) A school psychologist licensed by the Indiana state board of education.
- (6) A university or college-counseling center under the direction of a licensed psychologist, physician, or mental health professional.
- (7) A registered nurse or licensed practical nurse licensed under IC 25-23.
- (8) A clinical social worker licensed under IC 25-23.6-5-2.
- (9) A partnership, a limited liability company, a corporation, or a professional corporation (as defined in IC 23-1.5-1-10) whose partners, members, or shareholders are mental health service providers described in subdivisions (1) through (6).
- (10) A community mental health center (as defined in IC 12-7-2-38).
- (11) A program for the treatment, care, or rehabilitation of alcohol abusers or drug abusers that is:
  - (A) certified under IC 12-23-1-6; or
  - (B) created and funded under IC 12-23-14 or IC 12-23-14.5.
- (12) A state institution (as defined in IC 12-7-2-184).
- (13) A managed care provider (as defined in IC 12-7-2-127(b)).

*As added by P.L.1-1998, SEC.1. Amended by P.L.168-2002, SEC.13.*

## C. HIV/AIDS

**IC 16-41-7-1**

(a) This section applies to the following dangerous communicable diseases:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Human immunodeficiency virus (HIV).
- (3) Hepatitis B.

(b) As used in this section, "high risk activity" means sexual or needle sharing contact that has been demonstrated epidemiologically to transmit a dangerous communicable disease described in subsection (a).

(c) As used in this section, "person at risk" means:

(1) Past and present sexual or needle sharing partners who may have engaged in high risk activity; or

(2) Sexual or needle sharing partners before engaging in high risk activity; with the carrier of a dangerous communicable disease described in subsection (a).

(d) Carriers who know of their status as a carrier of a dangerous communicable disease described in subsection (a) have a duty to warn or cause to be warned by a third party a person at risk of the following:

(1) The carrier's disease status.

(2) The need to seek health care such as counseling and testing.

*As added by P.L.2-1993, SEC.24.*

### **IC 35-38-1-9.5**

A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) Convicted of a sex crime listed in section 7.1(e)\* [IC 35-38-1-7.1(e)] of this chapter and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in section 7.1(b)(8) [IC 35-38-1-7.1(b)(8)] of this chapter; or

(2) Convicted of an offense relating to controlled substances listed in section 7.1(f)\* [IC 35-38-1-7.1(f)] of this chapter and the offense involved the conditions described in section 7.1(b)(9)(A) [IC 35-38-1-7.1(b)(9)(A)] of this chapter.

*As added by P.L.123-1988, SEC.25. Amended by P.L.184-1989, SEC.24; P.L.1-1990, SEC.346; P.L.2-1992, SEC.876; P.L.2-1993, SEC.182.*

\* The provisions of IC 35-38-1-7.1(e) and IC 35-38-1-7.1(f), defining crimes considered “sex crimes” and “offenses related to controlled substances,” were deleted by the legislature in 2005 statutory amendments to IC 35-38-1-7.1. IJC is currently researching how the recent amendment affects this statute, and other statutory provisions below, which refer to sections 7.1(e) and 7.1(f). Should you have a circumstance involving statutes referring to these deleted sections, please call Jen Weber, staff attorney at IJC, for further guidance.

### **IC 35-38-1-10.5**

(a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of a sex crime listed in section 7.1(e) [IC 35-38-1-7.1(e)] of this chapter and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in section 7.1(b)(8) [IC 35-38-1-7.1(b)(8)] of this chapter; or

(B) convicted of an offense related to controlled substances listed in section 7.1(f) [IC 35-38-1-7.1(f)] of this chapter and the offense involved the conditions described in section 7.1(b)(9)(A) [IC 35-38-1-7.1(b)(9)(A)] of this chapter; and

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 [IC 35-38-1-10.7] of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;  
is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

*As added by P.L.123-1988, SEC.26. Amended by P.L.184-1989, SEC.25; P.L.1-1990, SEC.347; P.L.2-1992, SEC.877; P.L.2-1993, SEC.183; P.L.1-1998, SEC.196; P.L.71-1998, SEC.2.*

### **16-41-2-3**

(a) The following persons shall report to the state department each case of human immunodeficiency virus (HIV) infection, including each confirmed case of acquired immune deficiency syndrome (AIDS):

(1) A licensed physician.

(2) A hospital licensed under IC 16-21.

(3) A medical laboratory.

(4) The department of correction.

The report must comply with rules adopted by the state department.

(b) The records of the state department must indicate, if known:

(1) whether the individual had undergone any blood transfusions before being diagnosed as having AIDS or HIV infection;

(2) the place the transfusions took place;

(3) the blood center that furnished the blood; and

(4) any other known risk factors.

(c) A case report concerning HIV infection that does not involve a confirmed case of AIDS submitted to the state department under this section that involves an individual:

(1) enrolled in a formal research project for which a written study protocol has been

filed with the state department;

(2) who is tested anonymously at a designated counseling or testing site; or

(3) who is tested by a health care provider permitted by rule by the state department to use a number identifier code; may not include the name or other identifying characteristics of the individual tested.

*As added by P.L.2-1993, SEC.24. Amended by P.L.293-2001, SEC.2.*

#### **IC 16-41-6-1**

(a) Except as provided in subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to HIV without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 [IC 16-41-6-5 or IC 16-41-6-6] of this chapter if the woman refuses under section 7 [IC 16-41-6-7] of this chapter to consent to the test.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 [IC 16-41-6-4] of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

*As added by P.L.2-1993, SEC.24. Amended by P.L.106-1998, SEC.1; P.L.293-2001, SEC.3; P.L.212-2003, SEC.4; P.L.237-2003, SEC.6; P.L.97-2004, SEC.67.*

#### **IC 35-38-2-2.3 (Relevant portion only...)**

(a)(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of a sex crime listed in IC 35-38-1-7.1(e) and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in IC 35-38-1-7.1(b)(8); or

(B) the person had been convicted of an offense related to a controlled substance listed in IC 35-38-1-7.1(f) and the offense involved the conditions described in IC 35-38-1-7.1(b)(9)(A).

*As added by P.L.1-1991, SEC.198. Amended by P.L.2-1992, SEC.879; P.L.23-1994, SEC.16; P.L.1-1995, SEC.75; P.L.293-1995, SEC.1; P.L.76-2002, SEC.1; P.L.2-2003, SEC.91.*

## D. Juveniles

### **IC 12-23-12-1**

A minor who voluntarily seeks treatment for alcoholism, alcohol abuse, or drug abuse from the division or a facility approved by the division may receive treatment without notification or consent of the parents, guardian, or person having control or custody of the minor.

*As added by P.L.2-1992, SEC.17.*

### **IC 12-23-12-2**

Notification or consent is at the discretion of the division or a facility approved by the division. A criminal action or civil suit may not be maintained against the division or the division's agents for the reasonable exercise of this discretion.

*As added by P.L.2-1992, SEC.17.*

### **IC 12-23-12-3**

A minor less than eighteen (18) years of age may be placed under the treatment supervision of the division by the court having jurisdiction over the minor, according to the procedure established for juveniles in such cases or the procedure established by this article if the court having juvenile jurisdiction waives jurisdiction.

*As added by P.L.2-1992, SEC.17.*

## E. Child Abuse Reporting

### **IC 31-33-5-1**

In addition to any other duty to report arising under this article, an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article.

*As added by P.L.1-1997, SEC.16.*

### **IC 31-33-5-2**

(a) If an individual is required to make a report under this article in the individual's capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, the individual shall immediately notify the individual in

charge of the institution, school, facility, or agency or the designated agent of the individual in charge of the institution, school, facility, or agency.

(b) An individual notified under subsection (a) shall report or cause a report to be made.

*As added by P.L.1-1997, SEC.16.*

### **IC 31-33-5-3**

This chapter does not relieve an individual of the obligation to report on the individual's own behalf, unless a report has already been made to the best of the individual's belief.

*As added by P.L.1-1997, SEC.16.*

### **IC 31-33-5-4**

A person who has a duty under this chapter to report that a child may be a victim of child abuse or neglect shall immediately make an oral report to:

- (1) the department [of child services]; or
- (2) the local law enforcement agency.

*As added by P.L.1-1997, SEC.16. Amended by P.L.234-2005, SEC.107*

### **IC 31-33-6-1**

Except as provided in section 2 of this chapter, a person, other than a person accused of child abuse or neglect, who:

- (1) makes or causes to be made a report of a child who may be a victim of child abuse or neglect;
- (2) is a health care provider and detains a child for purposes of causing photographs, x-rays, or a physical medical examination to be made under IC 31-33-10;
- (3) makes any other report of a child who may be a victim of child abuse and neglect; or
- (4) participates in any judicial proceeding or other proceeding:
  - (A) resulting from a report that a child may be a victim of child abuse or neglect; or
  - (B) relating to the subject matter of the report;

is immune from any civil or criminal liability that might otherwise be imposed because of such actions.

*As added by P.L.1-1997, SEC.16.*

### **IC 31-33-6-2**

Immunity does not attach for a person who has acted maliciously or in bad faith.

*As added by P.L.1-1997, SEC.16.*

### **IC 31-33-6-3**



A person making a report that a child may be a victim of child abuse or neglect or assisting in any requirement of this article is presumed to have acted in good faith.  
*As added by P.L.1-1997, SEC.16.*

**IC 31-9-2-13** (Relevant portion only...)

(d) "Child", for purposes of the juvenile law, means:

(1) a person who is less than eighteen (18) years of age;

(2) a person:

(A) who is eighteen (18), nineteen (19), or twenty (20) years of age; and

(B) who either:

(i) is charged with a delinquent act committed before the person's eighteenth birthday; or

(ii) has been adjudicated a child in need of services before the person's eighteenth birthday; or

(3) a person:

(A) who is alleged to have committed an act that would have been murder if committed by an adult; and

(B) who was less than eighteen (18) years of age at the time of the alleged act.

*As added by P.L.1-1997, SEC.1. Amended by P.L.27-2004, SEC.1*

**IC 31-9-2-72**

"Juvenile law" refers to IC 31-30 through IC 31-40.

*As added by P.L.1-1997, SEC.1.*